

1 **KIMMEL & SILVERMAN, P.C.**
2 Craig T. Kimmel, Esq. (*pro hac vice*)
3 Jacob U. Ginsburg, Esq. (*pro hac vice*)
30 E. Butler Ave.
3 Ambler, PA 19002
3 (267) 468-5374
4 jginsburg@creditlaw.com
4 teamkimmel@creditlaw.com

5 **BUTSCH ROBERTS & ASSOCIATES LLC**
6 Christopher E. Roberts (*pro hac vice*)
7 231 S. Bemiston Avenue, Suite 260
7 Clayton, Missouri 63105
8 Phone: (314) 863-5700
9 CRoberts@butschroberts.com

10 **BUSH LAW GROUP**
10 Lenny Bush, Esquire (216072)
11 23679 Calabasas Road, Suite 1005
11 Calabasas, CA 91302
12 Telephone: (323) 868-1903
13 bushlawgroup@gmail.com
13 *Attorneys for Plaintiff Kristen Hall*

14 **MANATT, PHELPS & PHILLIPS, LLP**
14 ALEXANDRA N. KRASOVEC (SBN 279578)
15 Email: AKrasovec@manatt.com
16 CODY A. DeCAMP (SBN 311327)
16 Email: CDeCamp@manatt.com
17 MARAH A. BRAGDON (SBN 342646)
17 Email: MBragdon@manatt.com
18 2049 Century Park East, Suite 1700
18 Los Angeles, California 90067
19 Telephone: (310) 312-4000
19 Facsimile: (310) 312-4224

20 **NOLAN HEIMANN LLP**
20 Jordan Susman, Esq. (SBN 246116)
21 jsusman@nolanheimann.com
22 Margo Arnold, Esq. (SBN 278288)
22 marnold@nolanheimann.com
23 16000 Ventura Boulevard, Suite 1200, Encino, CA 91436
24 Telephone: (818) 574-5710
25 *Attorneys for Defendant Mythical Venture, Inc. d/b/a "Smosh"*

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28

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

KRISTEN HALL, *individually and
on behalf of all others similarly
situated,*

Plaintiff,

V.

MYTHICAL VENTURE, INC.,

Defendant.

Case No. 2:23-cv-10324-JFW-KES

**STIPULATION TO EXTEND
DEADLINE FOR PLAINTIFF TO
FILE MOTION FOR CLASS
CERTIFICATION**

Current Deadline: April 11, 2024

Proposed Deadline: May 13, 2024

Judge: Hon. John F. Walter

Complaint Filed: Oct. 28, 2021

TAC Filed: Nov. 13, 2023

Plaintiff Kristen Hall (“Plaintiff” or “Hall”) and Defendant Mythical Venture, Inc. d/b/a “Smosh” (“Smosh” or “Defendant” and with Plaintiff “the Parties”), jointly submit this Stipulation to Extend the Class Certification Deadline from April 11, 2024 until May 13, 2024. In support thereof, the Parties stipulate as follows:

I. Relevant Factual Background and Procedural History

After remand from the Ninth Circuit, this putative class-action was transferred from the Eastern District of California to this Court on December 13, 2023. ECF No. 83. The Parties promptly drafted their respective portions of the

1 Rule 26(f) report and plan, held their Rule 26(f) conference on December 22,
2 2023. ECF No. 91.
3

4 Plaintiff's counsel drafted interrogatories and requests for production over
5 the Christmas holiday, which were issued December 31, 2023 to Smosh. *See Ex.*
6 A; Plaintiff's interrogatories; Ex. B, Plaintiff's requests for production. Those
7 requests sought *inter alia*, information and documents related to the call and text
8 message records to putative class members. The parties served their respective
9 Rule 26(a) Disclosures thereafter: Defendant on January 8, 2023, and Plaintiff on
10 January 9, 2024. Defendant's Initial Disclosures identified Community.com, Inc.
11 ("Community") as an entity with records of consent and the text messages at
12 issue. Plaintiff did not subpoena Community at that time, however, because
13 Plaintiff was under the impression that Defendant would be able to produce the
14 documents and data of persons texted during the class period based on prior
15 correspondence with Defendant's counsel from 2021 in which counsel had
16 produced enrollment data for Plaintiff. *See Ex. C*, email from Defendant's
17 counsel dated September 9, 2021. Plaintiff was also cognizant of the obligation
18 to seek discovery from a party before burdening a non-party seeking for the same
19 documents or information.
20
21

22 . On January 30, 2024, counsel for the Parties conferred regarding an
23 extension of time for Defendant's responses to Plaintiff's written discovery.
24 Plaintiff agreed to an extension of one-week until February 6, 2024. During this

1 conference, Defendant's counsel advised Plaintiff's counsel that certain consent
2 documentation and text records sought via Plaintiff's written discovery would
3 need to be obtained from Community. Defendant subsequently served its
4 responses to Plaintiff's interrogatories on February 6, 2024, confirming the same.
5

6 Upon learning the foregoing, Plaintiff's counsel promptly drafted and
7 issued a subpoena to third-party Community. *See* Ex. D and Ex. E, subpoenas to
8 Community. Community was served with the subpoena on February 6, 2024. *See*
9 *Id.*
10

11 After being served, in-house counsel for Community conferred with
12 Plaintiff's counsel and advised she is new to the company, which has had
13 significant staff turnover, and that she was working with IT professionals on
14 obtaining and producing the requested documents and data. Counsel also
15 expressed uncertainty about the scope of documents Community would be able
16 to produce. Plaintiff agreed to grant Community an extension of the response
17 deadline until March 14, 2024. Community made an initial production on that
18 date. Community supplemented its responses on March 15, 2024.
19

20 In addition to the delay in obtaining necessary documents, the scheduling
21 of depositions warrant the extension of the deadline. Plaintiff requires the
22 depositions of Mythical's 30b6 designee(s) and of Community's corporate
23 designee to complete a motion for class certification. Defendant intends to take
24 Hall's deposition, as well as the deposition of her son, in order to respond to
25

1 Plaintiff's anticipated motion for class certification. The Parties had scheduled
2 the 30(b)(6) deposition of Mythical for March 20, 2024. However, a scheduling
3 conflict unexpectedly emerged for Mythical's counsel, causing the deposition to
4 be adjourned to a later date in the immediate future. In the coming weeks, the
5 Parties must complete the following depositions:
6

7

- 8 - The deposition of Mythical's 30(b)(6) deposition;
- 9 - The deposition of third-party Community's corporate designee;
- 10 - The deposition of Plaintiff, Kristen Hall; and
- 11 - The deposition of Kristen Hall's son.

13 Furthermore, recently the Parties commenced resolution discussions in
14 earnest. If the current class certification deadline is not extended, the Parties will
15 be forced to devote time and resources toward briefing class certification, as
16 opposed to attempting to resolve the case.
17

18 While Plaintiff had initially filed an unopposed motion to extend the class
19 certification deadline by 30 days (Doc. No. 123), the Parties have decided it is in
20 the interest of all to stipulate to that relief in order to complete necessary
21 depositions and continue exploring resolution.
22

24 **II. ARGUMENT**

25 For the reasons set forth below, good cause exists to extend the class
26 certification deadline from April 11, 2024 to May 13, 2024.
27

A. Standard for an extension of deadlines.

“District judges have broad discretion to manage discovery and to control the course of litigation under Federal Rule of Civil Procedure 16.” *Avila v. Willits Env’t Remediation Trust*, 633 F.3d 828, 833 (9th Cir. 2011)). A pretrial scheduling order may “be modified ‘upon a showing of good cause.’” *Ibid.* (quoting *Zivkovik v. S. Cal. Edison Co.*, 302 F.3d 1080, 1087 (9th Cir. 2002)). “The pretrial schedule may be modified ‘if it cannot reasonably be met despite the diligence of the party seeking the extension,’ but ‘if the party seeking the modification ‘was not diligent, the inquiry should end’ and the motion to modify should not be granted.’” *Zivkovik*, 302 F.3d at 1087). “Prejudice to the opposing party, though not the focus of the inquiry, also may support denying a motion.” *Id.* at *3. Further, under this Court’s Initial Standing Order, applications to extend deadlines set by this Court may be granted where “compelling factual support” establishes “good cause demonstrating why the change in date is essential.” ECF 9 at 3.

“Good cause may be found to exist where the moving party shows that it diligently assisted the court with creating a workable scheduling order, that it is unable to comply with the scheduling order's deadlines due to matters that could not have reasonably been foreseen at the time of the issuance of the scheduling order, and that it was diligent in seeking an amendment once it became apparent

1 that the party could not comply with the scheduling order.” *Kuschner v.*
2 *Nationwide Credit Inc.*, 256 F.R.D. 684, 687 (E.D. Cal. 2009)) (finding good
3 cause to extend discovery deadlines by 60 days where the “case was stayed
4 twice” and where “unforeseen circumstances” prevented defendants from taking
5 plaintiff’s deposition); *see also Hoyt v. Valdovinos*, 2021 U.S. Dist. LEXIS
6 116382, at *16 (S.D. Cal. June 22, 2021) (finding good cause to extend fact
7 discovery cut-off by 30 days on joint request by the parties where parties had
8 “been working together to timely complete discovery” and had “three depositions
9 left to conduct”); *Harper v. Ramos*, 2020 U.S. Dist. LEXIS 83610, at *3-4 (C.D.
10 Cal May 12, 2020) (finding good cause to extend discovery by 90 days “due to
11 unforeseen delays in obtaining discovery documents and otherwise completing
12 discovery”); *Hearns v. Gonzales*, 2019 U.S. Dist. LEXIS 9397, at *1-2 (E.D. Cal.
13 Jan. 18, 2019) (granting proposed extension where “even with due diligence [the
14 plaintiff] cannot meet the court’s discovery deadline”).

15

16 **B. Where the Parties require additional time, despite their best efforts**
17 **and diligence, good cause exists to extend the class certification**
18 **deadline.**

19

20 Where the party/parties seeking the extension have been diligent and
21 delays outside the control of the moving party/parties necessitate an extension of
22 a deadline, good cause to extend a deadline exists. *Bryant v. Cnty. of L.A.*, No.
23

1 [CV 20-9582-JFW\(Ex\), 2021 U.S. Dist. LEXIS 106724, at *4 \(C.D. Cal. June 4,](#)
2 [2021\) \(Walter, J.\).](#)

3
4 Here, both parties have been diligent throughout the process. As set forth
5 above, the Parties promptly commenced discovery on a condensed timeline and
6 the delays were reasonable and largely outside their control. The Parties will also
7 struggle to complete depositions by the existing deadline.
8

9 The Parties have been diligent and have been working cooperatively and
10 in good-faith. The Parties, however, have reached a consensus that more time is
11 required to obtain the evidence necessary to brief their respective positions on
12 class certification.
13

14

15 **C. Where the Parties stipulate to the relief sought, no party would be
16 prejudiced.**

17
18 If a proposed extension is stipulated or unopposed and no party would be
19 prejudiced by the extension, that weighs in favor of granting the extension. *See*
20 [Aubert v. Dzurenda, No. 2:18-cv-01329-GMN-EJY, 2020 U.S. Dist. LEXIS](#)
21 [242661, at *6 \(D. Nev. Dec. 28, 2020\)](#) (extending discovery end date noting the
22 motion was unopposed, and therefore “neither party will be prejudiced by the
23 short delay”). Here, the Parties jointly move for the 30-day extension. Given the
24 lack of opposition and the absence of prejudice to any party, the proposed
25 extension is warranted.
26
27

1 **D. The proposed extension of the class certification deadline would not**
2 **otherwise disrupt the schedule of the case.**

3 The Parties do not seek to extend the discovery end date or the trial date.
4
5 Rather, the Parties seek a stand-alone extension of the class certification deadline
6 in light of the delay in obtaining documents from a third-party and the scheduling
7 of depositions. The current deadlines and the sole proposed extension are set
8 forth in the chart below:
9

Matter	Time	Date based on current schedule	Proposed modification/deadline
Trial (jury) Estimated length: 3 days	8:30 am	12/3/24	unchanged
[Jury trial] Hearing on Motions in Limine; Hearing on Disputed Jury Instructions	8:00 am	11/22/24	unchanged
[Court trial] Hearing on Motions in Limine	8:00 am	X	unchanged
Pre-Trial Conference (File Proposed Voir Dire Qs and Agreed-to Statement of Case three days prior to PTC)	8:00 am	11/15/24	unchanged
Submit Pre-Trial Conf. Order; File Motions in Limine; Memo of Contentions of Fact and Law; Pre-Trial Exhibit Stipulation; Summary of Witness	10/31/24		unchanged

1	Testimony		
2	and Time Estimates; File		
3	Status		
4	Report re: Settlement; File		
5	Agreed Upon Set of Jury		
6	Instructions and Verdict		
7	Forms;		
8	File Joint Statement re		
9	Disputed		
10	Instructions, Verdicts, etc.		
11	Last day for hearing	1:30 pm	unchanged
12	motions *		
13	Discovery cut-off	7/22/24	unchanged
14	ADR Deadline	June 3, 2024	unchanged
15	Class Certification Deadline	April 11, 2024	May 13, 2024
16			

13 Where the other deadlines in the case would remain in place, the extension
14 of the class certification deadline by 30 days would not disrupt the proceedings
15 of the case as a whole.

17 **E. This is the first request to extend any deadlines in this Court's**
18 **scheduling order.**

19 This Court's Standing Order requires a party seeking an extension to
20 identify whether prior extensions have been requested. ECF No. 84. This case
21 was transferred to this Court on December 13, 2023. ECF No. 83. The current
22 schedule went into effect January 3, 2024. ECF No. 107. Where Plaintiff's
23 unopposed motion to extend the class certification deadline was withdrawn
24 before it was ruled upon, this stipulation will be the first request to extend the
25 class certification deadline.

1 The fact this is the first proposed extension weighs in favor of granting the
2 Parties' continuance request.
3

4 **III. CONCLUSION**

5 For the foregoing reasons, Plaintiff, Kristen Hall, and Defendant Mythical
6 Venture, Inc. jointly request the Court extend the class certification deadline from
7 April 11, 2024 until May 13, 2024. A proposed Order consistent with that relief
8 will be concurrently filed with this Stipulation.
9

10
11 SO STIPULATED:
12

13 KIMMEL & SILVERMAN, P.C.
14

15 By: */s/ Jacob U. Ginsburg*
16 Jacob U. Ginsburg, Esq. (*pro hac vice*)
16 Craig T. Kimmel, Esq. (*pro hac vice*)

17 BUTSCH ROBERTS & ASSOCIATES LLC
18

19 By: */s/ Christopher E. Roberts*
20 Christopher E. Roberts (*pro hac vice*)
20 Attorneys for Plaintiff

21 MANATT, PHELPS & PHILLIPS, LLP
22

23 By: */s/Alexandra N. Krasovec*
23 Alexandra N. Krasovec
24 Attorneys for Defendant Mythical Venture, Inc.
24 d/b/a "Smosh"

25
26 DATED: March 20, 2024
27

SIGNATURE OF CERTIFICATION

Pursuant to Civil L.R. 5-4.3.4(a)(2)(i), the filer attests that all other signatories listed, and on whose behalf the filing is submitted, concur in the filing's content and have authorized the filing.

CERTIFICATE OF SERVICE

I hereby certify that on March 20, 2024, I caused to be electronically filed a true and correct copy of the foregoing with the Clerk of Court using the CM/ECF system and that all counsel of record will be served via the Notice of Electronic Filing generated by CM/ECF.

/s/ Jacob U. Ginsburg